Atto y Docket No. 57636-8022.US00

REMARKS

RESTRICTION REQUIREMENT

The Office sets forth a restriction requirement for the following groups of claims: Group I (claims 1-11) which are directed to an immunostimulatory fusion protein; Group II (claims 12-14) which are directed to a method of making superactivated DCs; Group III (claims 15-17) which are directed to a method of treatment using superactivated DCs; and Group IV(claims 18-19) which are directed to a method of treatment using an immunostimulatory fusion protein.

The Applicants hereby provisionally elect the claims of Group I (claims 1-11) with traverse, for examination in the present application. Reconsideration is requested of the restriction of the Group I claims from the claims of Group IV (claims 18-19). Although the inventions defined by the claims of Groups I and IV are distinct or independent, the search and examination of these claims can be made without additional burden on the Examiner. According to MPEP 803, "[i]f the search and examination of an entire application can be made without serious burden, the examiner **must** examine it on the merits, even though it includes claims to distinct and independent inventions." *See* MPEP 803 (emphasis added).

Group I claims are directed to immunostimulatory fusion proteins which comprise a polypeptide or protein antigen sequence component derived from the intracellular domain of the HER-2 protein where the immunostimulatory fusion protein is effective to elicit a cellular immune response to the polypeptide or protein antigen sequence component of the fusion protein. Group IV claims are directed to methods of treating cancer which involve the adminstration of such immunostimulatory fusion proteins in order to result in a cellular immune response to the polypeptide or protein antigen sequence component of the fusion protein. The claims of both Group I and IV are classified in class 424, subclass 192.1.

Thus, Groups I and IV contain claims involving immunostimulatory fusion proteins which are capable of eliciting a cellular immune response to the polypeptide or

protein antigen sequence component of the fusion protein. In view of the relationship between the subject matter of the claims of Groups I and IV, the search and examination of Group IV should not place a serious additional burden on the Examiner beyond what is already required with respect to the Group I claims. As such, Applicants respectfully request that Group IV be rejoined for examination in the present case.

For the reasons set forth above, reconsideration of the restriction requirement and rejoinder of the claims of Groups I and IV is respectfully requested. Applicants reserve the right to file divisional applications directed to the non-elected claims of Groups II and III. Additionally, in the event that the Examiner does not allow rejoinder of Group IV, Applicants also reserve the right to file a divisional application directed to this non-elected group.

Respectfully submitted,
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Date: 10/01/2002

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